



UNITED STATES DEPARTMENT OF COMMERCE
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08/044,240 04/07/93 MC HALE

M 1391-1275

EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

13

1302

DATE MAILED: 05/12/95

D3M1/0512

JEFFERY M. DUNCAN
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This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 2/22/95 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☒ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

- ☒ Claims 1-6, 8, 15-19, 21, 28, 51-54 and 56 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
- ☒ Claims 57-64 have been cancelled.
- ☐ Claims _____ are allowed.
- ☒ Claims 1-6, 8, 15-19, 21, 28, 51-54 and 56 are rejected.
- ☐ Claims _____ are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.
- ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
- ☐ Formal drawings are required in response to this Office action.
- ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
- ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
- ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
- ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

EXAMINER'S ACTION

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Part III DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 103

2. Claims 1 to 6, 8, 15 to 19, 21, 28, 51 to 54 and 56 are rejected under 35 U.S.C. § 103 as being unpatentable over Lorenz (D.T. Pat. No. 3,516,852) or Cherukuri et al. (U.S. Pat. No. 4,971,806) in view of Lorenz for the reasons set forth in the last Office Action.

Response to Amendment

3. Applicant's arguments filed 2/22/95 have been fully considered but they are not deemed to be persuasive.

4. Applicants argue that prior art does not suggest the specific designs which applicants are claiming. It is considered that the applied prior art teaches multiple designs which would be attractive to a consumer and that this teaching obviates the instant designs. Specifically, the chewing gums disclosed by the prior art show (1) the inlaying of one chewing layer within another where the inlaid layer cannot be seen from the bottom of

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the gum and (2) diagonal stripes (see reference to BEECHNUT®, bottom of page 6 of the last Office Action) and therefore, it is considered that applicants have merely modified the designs to suit the consumer's whim. While the designs may not be able to be produced by the apparatus or processes disclosed by the prior art, it is considered that the claimed products do not require the process disclosed in applicants' specification but could be produced by hand. Further, it is considered that the products produced by the prior art, depending on how they are cut into separate pieces, can be in the designs that are instantly claimed.

Conclusion

5. No claim is allowed.
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
7. Jones (U.S. Pat. No. 1,885,145) discloses an edible article (see Fig. 10).
8. Faust, Schumacher, Huzinec (U.S. Des. Pat. Nos. 271,344, 271,439, 271,534 and 271,535) disclose chewing gums of various different designs.
9. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Monday through Friday from 8:00 to 4:30.


11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Czaja, can be reached on (703)-308-3852. The fax phone number for this Group is (703)-305-3602.

12. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curt Sherrer

May 9, 1995



DONALD E. CZAJA
SUPERVISORY PATENT EXAMINER
GROUP 130